

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

GERARDO HERRERA,

Plaintiff,

v.

No. CV 20-142 CG/GBW

BERKLEY REGIONAL INSURANCE  
COMPANY,

Defendant.

**NOTICE OF CIVIL JURY TRIAL**

**BY DIRECTION OF THE HON. CARMEN E. GARZA, CHIEF MAGISTRATE JUDGE**, the case of *Herrera v. Berkley Regional Insurance Company* will come on for:

**PRETRIAL CONFERENCE on Tuesday, December 21, 2021, at 1:30 p.m.** at the United States Courthouse, 100 N. Church, Organ Courtroom, Las Cruces.

**JURY SELECTION and TRIAL on Monday, January 10, 2022, at 9:00 a.m.**, at the United States Courthouse, 100 N. Church, Organ Courtroom, Las Cruces.

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**CV 20-142 CG/GBW      Herrera v. Berkley Regional Insurance Company (5 days)**

Attorneys for Plaintiff:      Robert C. Trenchard, Jr.  
Royce E. Hoskins  
Sean Wang

Attorneys for Defendants:      Brian L. Shoemaker  
Ada B. Priest

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Counsel and parties are to appear before Judge Garza one-half hour prior to jury selection to address any matters needing attention. For pretrial deadlines and other information, please refer to the attached pages.

Please direct inquiries regarding this setting or other civil calendaring information to Katherine Erickson at 575-528-1670.



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**Carmen E. Garza**  
**Chief United States Magistrate Judge**

**PREPARATION FOR TRIAL  
BEFORE THE HONORABLE CARMEN E. GARZA**

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**DECORUM AND GENERAL INSTRUCTIONS**

1. Be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, make arrangements in advance for the handling of such matters.
2. Court time may not be used for marking exhibits. This must be done in advance of the court session.
3. Under no circumstances are you to attempt to communicate in any manner with any member of the jury prior to or during trial. Your clients and witnesses should also be so instructed.
4. Do not argue the case or discuss law in your opening statement. Your opening statement should present a concise summary of the ultimate facts to be proved. Do not describe in detail what particular witnesses will say.
5. You may move from the lectern when you question witnesses so long as it is not unduly distracting or uncomfortable for trial participants.
6. If you intend to question a witness about a group of documents, avoid delay by having all the documents with you when you start the examination.
7. Commence your examination or cross-examination without unnecessary preliminary introductions.
8. When you object in the presence of the jury, make your objection short and to the point. "Speaking" objections will not be allowed. Cite the Rule of Evidence or common designation for your objection (e.g., "hearsay"). Do not argue the objection. Do not make substantive motions (e.g., a motion for a mistrial or directed verdict) in the presence of the jury. Such matters may be raised at sidebar or, by request, at the first recess without waiving any rights by such delayed motion.
9. Do not argue with the ruling of the Court in the presence of the jury and refrain from thanking the Court following a ruling.
10. Each party will be responsible for securing the appearance of witnesses the party proposes to call.
11. Clients and witnesses are expected to be on time, and counsel should always have witnesses available to fill a full trial day (*i.e.*, 8:30 AM - 5:00 PM). Counsel who does not have a witness available may be penalized.

12. Those exhibits which are not stipulated to shall be identified in sufficient detail to allow the Court to anticipate significant evidentiary problems.
13. Any exhibits not admitted at the beginning of trial may not be shown to the jury or testified to, regarding the contents of such exhibit, by the witness unless and until they are admitted.
14. Jury instructions shall be submitted to the Court in accordance with the section entitled **PREPARATION OF JURY INSTRUCTIONS** contained herein, along with Judge Garza's stock jury instructions, which are available on Judge Garza's Chambers Page at <https://www.nmd.uscourts.gov/content/honorable-carmen-e-garza> or by request.
15. Counsel will not get into possible areas of reversible error without prior Court approval, whether in opening or questioning witnesses. (*E.g.*, Comment on a defendant's silence, invocation of constitutional rights, Rules 404(b), 608 or 609 material, etc.)

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Defendant.

**ORDER SETTING JURY TRIAL**

After a telephonic Status Conference on June 21, 2021, to determine the appropriate dates for a jury trial and pretrial conferences in this case, the Court sets the following dates and deadlines:

A **Pretrial Conference** will be held on **December 21, 2021, at 1:30 p.m.** in the **Organ Courtroom at the United States Courthouse, 100 North Church Street, Las Cruces, New Mexico**. All attorneys participating in the trial must be present for the pretrial conference. The parties may, but need not, be present.

**Jury Selection and Jury Trial** will begin on **January 10, 2022, at 9:00 a.m.** in the **Organ Courtroom at the United States Courthouse, 100 North Church Street, Las Cruces, New Mexico**.

Counsel are directed to submit a proposed consolidated final pretrial order as follows: Plaintiffs to Defendant on or before **September 17, 2021**; Defendant to Court on or before **October 1, 2021**. Counsel are directed that the pretrial order will provide that no witnesses except rebuttal witnesses, whose testimony cannot be anticipated, will be permitted to testify unless the name of the witness is furnished to the Court and

opposing counsel no later than thirty (30) days prior to the time set for trial. Any exceptions thereto must be upon order of the Court for good cause shown.

**Motions in Limine:** All motions in limine<sup>1</sup> are due by **November 29, 2021**. Any responses or objections are due by **December 6, 2021**.

**Witness Lists:** The parties shall file their witness lists, which must disclose both witnesses that the parties “will call” and witnesses that they “may call” at trial. Witness lists are due by **November 12, 2021**. Any objections to a witness named by the opposing party must be filed by **November 29, 2021**.

**Designations and Counter-Designations of Deposition Testimony:** The parties shall file designations, and counter-designations, of deposition testimony that they intend to use at trial. The designations and counter-designations must state the pages and lines of the deposition to be used. Plaintiffs will use a yellow marker and Defendants a blue marker. These requirements do not apply to cross-examination or rebuttal of a witness presented in person at trial. Designations must be filed by **December 6, 2021**. Counsel must jointly submit one physical copy of each deposition to my chambers by this due date and must highlight the parts of the depositions that are to be used. Any objections to testimony designated by the opposing party, and any counter-designations, must be filed by **December 13, 2021**. If the parties wish to make further designations in light of the designations and counter-designations, leave for additional designations must be requested from the Court **at the pretrial conference**.

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<sup>1</sup> Motions challenging the admissibility of expert testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) are not motions in limine. *Daubert* motions shall be filed no later than the dispositive motions deadline.

**Exhibits:** The parties shall **jointly** file one list of stipulated exhibits and shall separately file lists of contested exhibits no later than **November 12, 2021**. They shall also submit **two physical copies of marked exhibits to my chambers by the next business day**. The first copy shall include exhibits that the parties stipulate to be admissible, and shall be labeled consecutively. The second copy shall include exhibits, the admissibility of which are contested, and shall be labeled consecutively beginning with the next sequential number after the final stipulated exhibit designation. For instance, if there are 50 stipulated exhibits, 20 contested plaintiffs' exhibits, and 20 contested defendants' exhibits, the first notebook shall contain stipulated exhibits numbered 1 to 50. The second notebook shall contain plaintiffs' contested exhibits numbered 51 through 70 and defendants' contested exhibits numbered 71 through 90.

In order to allow sufficient time for a party to decide whether to contest the admission of exhibits, each party must send a list of their proposed exhibits to the opposing party no later than **November 4, 2021**.

**Statement of the Case:** No later than **November 19, 2021**, the parties shall file a consolidated, clear, concise statement of the case, to be read by the Court to the jury at the beginning of trial. If counsel are unable to agree to a consolidated statement of the case, they shall file separate statements of the case. The parties shall meet and confer about the statement of the case no later than **November 12, 2021**.

**Jury Instructions:** The parties shall meet and confer about proposed jury instructions no later than **November 24, 2021**. Plaintiffs are responsible for filing a set of requested jury instructions to which all of the parties agree. Requested instructions upon which the parties cannot agree must be filed separately by the requesting party. There shall be only one instruction per page and each instruction shall include a citation

to supporting authority at the bottom of the page. All such filings are due **December 1, 2021**. On that same day, the parties must also email a copy of the instructions in Word format, without citations, to [garzaproposedtext@nmd.uscourts.gov](mailto:garzaproposedtext@nmd.uscourts.gov)

A party must file written objections to an opposing party's requested instructions no later than **December 8, 2021**.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending from the end of the signature.

THE HONORABLE CARMEN E. GARZA  
CHIEF UNITED STATES MAGISTRATE JUDGE

**EXHIBIT LIST**

CASE NO. \_\_\_\_\_

\_\_\_\_\_ VS. \_\_\_\_\_

EXHIBIT					OFFERED ADMITTED		
DATE	PLF No.	DFT LTR	WITNESS	DESCRIPTION OF EXHIBIT	O	A	OBJ